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Resolving Municipal Disputes: *A handbook of key points*

*Tax-sharing, land use, labor, and
council-manager disputes*

*By
Dr. David Stiebel*

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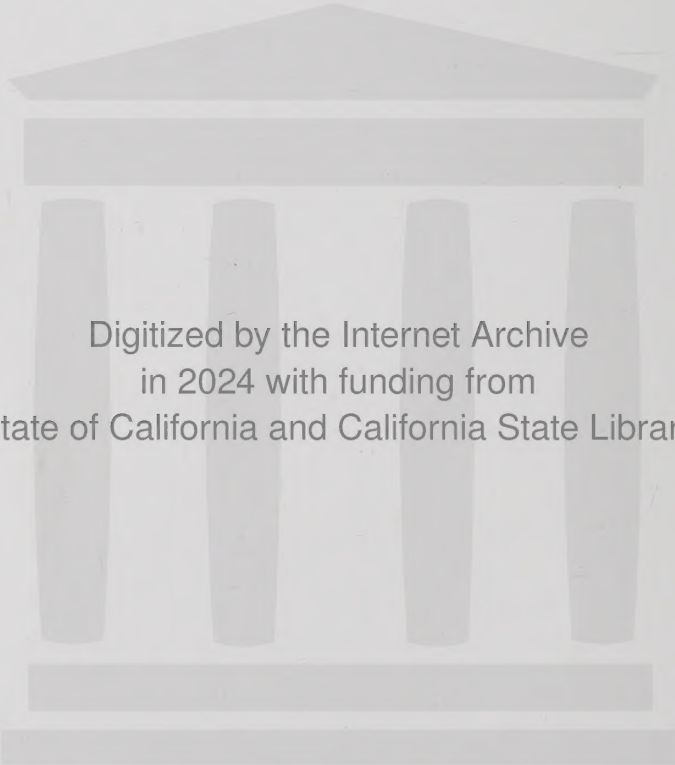
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Resolving Municipal Disputes:

A handbook of key points

*Tax-sharing, land use, labor,
and council-manager disputes*

By
Dr. David Stiebel

 **ABAG**
Association of
Bay Area Governments

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INTRODUCTION

Audience

This handbook is intended for:

City and County Managers

Assistant City/County Managers

Planning/Redevelopment Officials

Human Resource Directors

Union Representatives

Attorneys

Finance Directors

Fire/Police Chiefs

Department Heads

Elected Officials

Purpose

This handbook is designed to:

- Deliver key points about municipal dispute resolution quickly and concisely, in an accessible format.
- Assist officials in deciding what to do next in a difficult dispute.

Since municipal disputes are too complex for one universal formula, this manual provides questions to ask and steps to follow in deciding your next move in your case.

This manual distills only the key points. To learn the rationale behind them, you'll need a comprehensive course in municipal dispute resolution.

Approach

In difficult disputes, reaching agreement requires a better negotiation strategy—not just good intentions. In fact, talking more can make things *worse*.

This handbook outlines a different approach, challenging assumptions about trust, communication, public and employee involvement, and willingness to negotiate.

On-the-Job Skills

This handbook addresses practical questions such as:

- Why does talking more make things worse?
- How can you distinguish a communication problem from a real dispute?
- How can you negotiate if they refuse?
- When does pressure work, and when does it backfire?
- Does negotiation require trust?

Practical Applications

The key principles have been applied to disputes involving:

- tax sharing
- development
- redevelopment
- annexations
- labor relations
- cable TV
- council-manager relations
- public-private partnerships

Help ABAG Serve You Better

Please tell me how well this handbook serves your needs, so we can improve it for the next revision. Please call (415) 424-1861 or write to the address below with any comments on format or content.

Dr. David Stiebel
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Palo Alto, CA 94303

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WHY NEGOTIATE?

Ten Costs of Municipal Combat

1. Minor concerns blossom into political crises.
2. The city comes under attack and loses credibility.
3. Endless, contentious public meetings ensue.
4. Expensive lawsuits are filed.
5. Recalls, initiatives, or referenda begin circulating.
6. Working relationships suffer.
7. Harmful publicity results.
8. Lingering resentment leads to revenge.
9. If a unilateral decision is imposed, people may not comply with it.
10. Similar problems may recur.

Does Negotiation Take Longer?

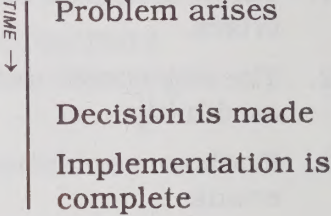
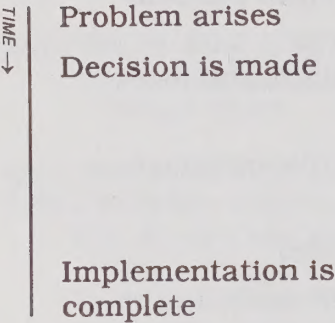
Unilateral action seems faster—if you examine only the time it takes to make the decision. But implementing an unpopular decision may ignite resistance, proving costly and time-consuming.

It typically takes much longer to reach a negotiated decision, but then implementation is comparatively easy.

So when you examine *total* time, through implementation, negotiation is often faster:

Unilateral action:

Negotiation:



TRUST

The Myth of Trust

The myth is that you can't help resolve a municipal dispute unless:

- The parties trust each other to be ethical.
- The parties trust you.

The Trap of Seeking Trust

What's wrong with asking people to trust each other?

1. It rarely works. It's difficult for people to trust others they don't know. It's even harder to trust others they know and dislike.
2. An agreement rooted in trust can destroy a working relationship. (Suspicion about the other side's reliability may erode trust.)
3. People may impose preconditions for trusting the other side.

Example: "I'll trust you if you do what I want."

Don't Base Your Effectiveness on Their Trust

If you believe that their trust is essential, you cripple your ability to promote resolution, because:

- People may agree to trust you only if you side with them.
- You give up power to whoever threatens to withhold trust.

To Proceed Without Trust...

- Find ways to align your self-interest with theirs.
 - This rewards mutually acceptable behavior.
 - It gives you confidence that they'll follow through on their promises.

Examples: contract penalties, collateral for a loan.

COMMUNICATION

Three Myths of Communication

1. Difficult disputes vanish with clear communication.
2. Clarifying communication always helps.
3. When in doubt, hold a meeting.

The Limits of Communication

- In simple misunderstandings, communication can be magic.
- In real disputes, communication is not sufficient.

Communication Problem or Real Dispute?

Ask yourself...

“Would this dispute magically disappear if the parties understood each other?”

- If so, it's a communication problem.
- If not, it's a real dispute.

In a real dispute, the parties' goals conflict. The parties may also be having trouble communicating, but improved communication won't resolve a real dispute. The conflict in goals will remain.

Will Talking Help or Hurt?

- Talking more may help only if lack of communication is the problem.
- At best, communication can resolve only a communication problem.

- In a real dispute, clarifying communication can breed deadlock.

Is Poor Communication the Cause or the Result?

Often poor communication is not the cause of the problem. It is the *result*. Consider a common bargaining pattern:

1. I take a stand and try to convince you that I'm right.
2. You see things differently.
3. I try to convince you to agree with me.
4. You try to convince me to agree with you.
5. Since persuasion isn't working, we try to bully each other.
6. Since you're trying to bully me, I stop talking to you.
7. You stop talking to me.

Here, the more we talk, the worse it gets, and then we stop talking, because we disagree.

WILLINGNESS TO NEGOTIATE

The Myth that You Need Permission to Negotiate

People often assume that:

- Municipal dispute resolution requires prior consent.
- The parties must be willing to negotiate.

Why Might the Other Person Reject Negotiation?

1. The other person ("X") fears it might signal a willingness to grant concessions.
2. X sees the number of potential concessions as unlimited.
3. X fears appearing weak to us or others (including constituents).
4. X wants to look tough.
5. X wants to receive something before giving anything.
6. X sees no reason to negotiate now rather than later.
7. The present situation is unlikely to change.

In seeking negotiation, we're asking X to make an ambiguous commitment that might jeopardize X's interests.

How Can You Begin Resolving a Municipal Dispute?

- Don't ask permission to negotiate (unless you want to hear the answer).
- Think of a mutually beneficial action that X could realistically take.

- Determine how to make it easy for X to take that action.

(See *Tactics and Principles*, page 15, and *Blueprint for a Better Strategy*, page 21.)

TACTICS AND PRINCIPLES

Start With the Other Person, Not With Yourself

- Ask: “Who should do what, when, and why?”
- Not: “What should my position be?”

Look Behind People's Actions

- X may be acting logically, rationally, emotionally, intuitively, reflexively, or habitually.
- Often you must understand what's behind X's present action before you can think of a new, mutually beneficial action that X will want to take.

Questions to Uncover Motivations

- What perceptions could prompt X to take the present action that you dislike?
- How would X's constituents respond if X did what you want?
 - What's the worst that people could say about X?
 - What's the best that people could say?
- What interests prevent X from doing what you want?

Checklist of Possible Motivations

Ask yourself whether any of the following motivators might lie behind X's present action.

Economics

Is X concerned about having enough money to survive?

Does X want to avert future money worries?

Security

Does X's present action make X feel more secure?

Would X lose that sense of security by taking a different action?

Control

Does X feel in control now?

Is X afraid to let someone else be in charge?

Self-esteem

Does X's present action enable X to feel good about himself or herself?

Would another course of action threaten X's self-esteem?

Relationships

Does X's present action improve X's relationship with someone else or some group?

Is X taking the present action to satisfy someone else?

Belonging

Does X's present action enhance X's feeling of belonging to a group?

Is X afraid of losing that feeling of belonging?

Reputation

Does X's present action promote X's reputation?

Is X's present action intended to change X's reputation?

Recognition

Does X's present action bring X greater recognition or status? From whom?

Symbolism

Symbolically, does X look better by taking the present action that you dislike?

If X cooperated with you, would that symbolize something negative to X's constituents?

Ideology

Is X's present action consistent with X's beliefs and values?

Does X see other possible actions as contradicting X's ideology?

Principles

Is X's present action consistent with X's principles?

Does X see the present action as morally correct?

Precedent

In X's view, is X's present action consistent with precedent?

Does X want to take actions consistent with previous statements or policy?

Tradition

Is X worried about breaking tradition?

In X's view, is X's present action consistent with tradition?

Commitments

Does X's present action fulfill a commitment that X has made to someone?

Is X reluctant to make a commitment?

Pursuit of other options

Is X's present action designed to keep X's options open?

Does X believe there is more to gain by taking the present action than by taking other actions?

Habit

Is X taking the present action routinely, out of habit? Is X making a conscious decision to take this action?

Is X afraid of doing something new?

A Mutually Beneficial Action is...

- Easy for X to take.
- Appealing to X.
- Helpful to you (even in a small way).

Check: Is the Action Truly Mutually Beneficial?

Before trying to influence X to take an action that you *think* is mutually beneficial, ask yourself:

- Who really wants this action to be taken?
 - Does X want to take this action, or do I?

Will It Help You?

Don't take an action unless:

- It is designed to enhance your power.
- You're willing to accept X's response.
 - General rule of thumb:
Don't ask a question unless you want to hear the answer.

Is It Practical?

The mutually beneficial action that you want X to take should be:

- Specific
 - Example: "Supporting us" is not specific. What should X do? Write a letter? If so, what specifically should X say?

- Realistic
 - Example: It may not be realistic for X to agree to negotiate, if X has publicly refused to talk. What *could* X agree to?

Creating a Negotiation Strategy

- Don't try to invent the whole strategy all at once. (See *Why Not Create the Whole Process in Advance*, page 28.)
- Proceed incrementally, making it easy for X to take one mutually beneficial action after another.
- Don't ask the other person to take an unrealistically large action all at once.

No single action is likely to resolve a difficult dispute. Each action should build on the preceding one and culminate in resolution.

To Verify You're Moving Toward Resolution, Ask:

1. What are X's present actions or responses to the situation?
2. Do those actions help meet your needs?
 - If so, you're making progress.
 - If not, think of a mutually beneficial action that X might take, and then make it easy for X to take that action.

When to Use Pressure

Pressure intensifies existing tendencies. To decide whether to use pressure, ask yourself: What is the existing tendency?

- If the parties are moving close to agreement, some pressure may help.
- If they're far apart, more pressure may cause them to harden their opposition. Then the harder you push, the harder they may push back.

Apply pressure only if you think it will help, not because you are desperate.

BLUEPRINT FOR A BETTER STRATEGY

7 Steps to Municipal Dispute Resolution

1. What type of problem is it?

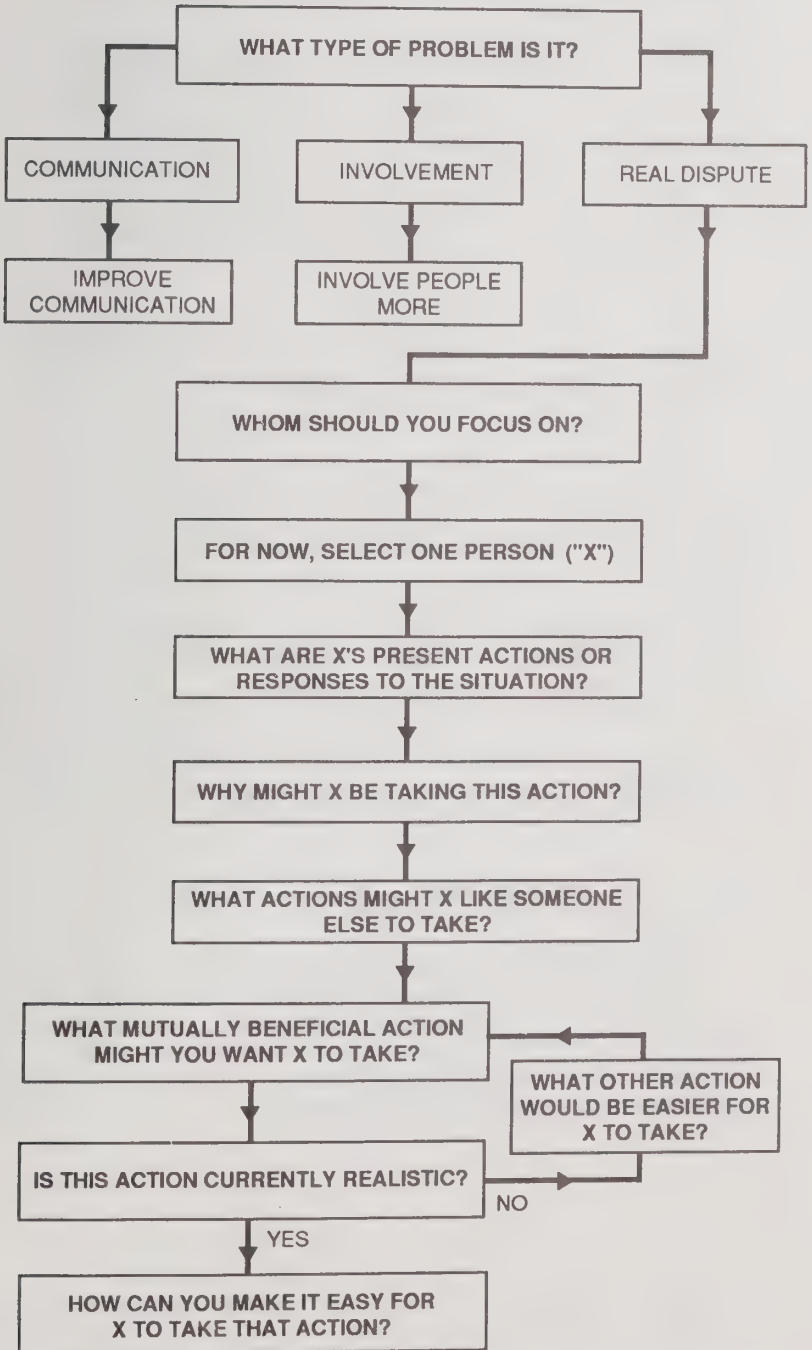
- *Communication*
(The dispute would disappear if the parties understood each other.)
- *Involvement*
(The dispute would disappear if there were greater public or employee participation.)
- *Real Dispute*
(The parties' goals conflict. The dispute would *not* disappear with greater understanding or participation.)

Go to step 2 if it's a real dispute.

2. Whom should you focus on? For now, select one person ("X").
3. What are X's present actions or responses to the situation?
4. Why might X be taking this action? X may be acting purposively or reflexively. Consider both logic and emotion.
5. What actions might X like someone else to take?
6. What mutually beneficial action might you want X to take?
 - Is this action currently realistic? If not, what other action would be easier for X to take?

7. How can you make it easy for X to take that action?

If X responds negatively, review the seven steps and determine which questions you answered inaccurately. For each question, ask: How can you make your answer more accurate?



SELF-DESTRUCTIVE GAMES THAT WORSEN DISPUTES

Why Should You Recognize Games That Worsen Disputes?

- To learn whether the game you're playing is causing the problem.
- To avoid playing a self-destructive game.

Game: "You Give, They Decide"

1. You give unilateral concessions with nothing in return.
2. Those on the other side keep whatever concessions you give, and they alone decide when you've given enough. (They have all the power.)
3. The attempt to appease the other side often fails.
4. They gain by rejecting your offers and demanding more.
5. The longer they fight you, the more they can get.

Example: You propose building a 15-story civic center when you really want only 10 stories. You try to appease the neighbors by compromising from your extreme 15-story position, but they continue to fight you.

Game: The Dance of Deadlock

1. People decide their stances unilaterally.
2. They meet to understand the other side's position.
3. Each side announces and explains its position, hardening its stance and becoming more committed to it.
4. Nobody wants to give in.
5. Someone must give in to reach agreement.
6. If one side does give in, there's often resentment or embarrassment.
7. If nobody gives in, a stalemate ensues.
8. The working relationship suffers.

Why People Play Self-Destructive Games

- Many people play the games unconsciously, out of habit or tradition.
- People often believe that taking the next step in a game will further their self-interest.
 - Example: At step 4 of the Dance of Deadlock, each participant seems to gain by refusing to budge. Stubbornness appears to be a wise approach.

How Can You Stop Playing a Self-Destructive Game?

- Think of a mutually beneficial action that you might want X to take. (See *Tactics and Principles*, page 19, and *Blueprint for a Better Strategy*, page 21.)

PUBLIC OR EMPLOYEE INVOLVEMENT

Two Myths of Involvement

1. Involvement will cure a difficult dispute.
2. You should plan the complete involvement process in advance.

When Can Involvement Help?

1. Involvement may help only if lack of involvement is the problem.
2. At best, public or employee involvement can resolve only an involvement problem.
3. Involvement is not enough to resolve a real dispute.

Involvement Problem or Real Dispute?

Ask yourself...

“Would this dispute magically disappear if there were greater public or employee participation?”

- If so, it's an involvement problem.
- If not, it's a real dispute.

In a real dispute, the parties' goals conflict. The parties must participate in deciding the outcome, but the problem isn't lack of involvement. It's the conflict in goals. The parties will not reach agreement unless they perceive that it helps them achieve their goals.

Designing a Better Involvement Process

In a real dispute, you must do more than merely involve people. You must involve them in a way

designed to promote agreement, so that the parties benefit selfishly by cooperating with each other at every step. Here are tips for creating such an involvement process:

1. Create the process one step at a time, not all at once in advance.
2. To create the next step of the involvement process, think of a mutually beneficial action that X might take.
3. Determine how to make it easy for X to take that action. Your facilitative move becomes the next step in your involvement process.

Why Not Create the Whole Process in Advance?

- You can't predict people's perceptions and responses several steps ahead.
- You don't know whether a step you create now will promote resolution later, when you must execute it.
- If you commit to all the steps now, you may feel public pressure to follow them, even if they prove counterproductive.
- You may cripple your flexibility later to encourage X to take actions that may be more mutually beneficial.

What if Someone Wants to Know the Complete Process Now?

1. Describe each phase of the process broadly, to allow yourself flexibility.
 - Example: Phase 1 might be
"Identification
of Concerns."

2. Explain that the process must remain flexible enough to respond to people's needs and changing conditions.
3. Focus on discussing the current phase you are in, instead of describing future stages.
4. Avoid specifying the steps within each stage.

Focus on the Purpose, Not the Process

- Don't ask: "What involvement process should we develop?"
- Instead: "Who should do what, when, and why?"

Two Pitfalls of Focusing on Process

1. You may succeed at involving people and fail at resolving the dispute. You may construct a process that achieves no purpose.
2. People may become committed to a purposeless process, producing disappointment, anger, frustration and scapegoating.

How to Evaluate an Involvement Technique

There are many involvement techniques, including computer graphics, newsletters, public meetings, and one-on-one sessions.

To evaluate a particular involvement technique ask yourself...

- "Will this technique help make it easy for X to take a mutually beneficial action? How?"
- "Is this technique the *best* way to facilitate that action?"

For Additional Copies of ABAG's

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DR. DAVID STIEBEL of Palo Alto, CA, lecturer at the University of California, Berkeley, is a specialist in municipal dispute resolution.

He works with local governments to resolve difficult disputes using improved negotiation strategies. He develops steps to overcome obstacles to agreement in tax-sharing, land use, labor, and council-manager disputes.

Dr. Stiebel has addressed recent conferences of the American Planning Association, American Society of Public Administration, California Public Employee Labor Relations Association, California Redevelopment Association, and the League of California Cities.

His analyses have appeared in *Public Management*, *Western City*, *American City & County*, *City & State*, *California Fire Journal*, *Redevelopment Journal*, and also in the *Los Angeles Times* and the *San Jose Mercury News*.

Dr. Stiebel is President of the Society of Professionals in Dispute Resolution in San Francisco.

He has guest lectured at universities across California, including U.C.L.A., Cal State Hayward, San Jose State University, Golden Gate University, Cal State Bakersfield, U.C. Santa Cruz, and U.C. Davis.

THE ASSOCIATION OF BAY AREA GOVERNMENTS (ABAG) is one of nearly 500 councils of governments across the nation working to help solve problems in areas such as land use, housing, transportation, environmental quality, and economic development.

ABAG is owned and operated by the cities and counties of the San Francisco Bay Area. It was established in 1961 to protect local control, plan for the future, and promote cooperation on areawide issues. ABAG has answered the needs of its members by providing low-cost services that save taxpayers millions of dollars.

One of ABAG's vital functions is to provide a forum to resolve local differences through workable agreements. The association sponsors workshops and conferences where public officials, business leaders, interest groups, and citizens discuss programs, regulations, and legislation affecting them.



Association of Bay Area Governments